UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

ORDER DENYING THE NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION'S PETITION FOR RULEMAKING REGARDING NO-EFFECT THRESHOLDS

December 19, 2025

This Order resolves a Petition filed by the National Horsemen's Benevolent and Protective Association ("NHBPA") requesting that the Commission "adopt a rule to create no-effect thresholds for certain substances found in racehorses under the anti-doping and medication control ('ADMC') program of the Horseracing Integrity and Safety Act of 2020."[1] On July 10, 2024, the Commission published a Notice in the *Federal Register* requesting public comments on the Petition.[2] In response, the Commission received over a thousand comments. Having considered the contents of the Petition and the comments received, the Commission hereby denies the Petition for the reasons explained below.[3]

I. Background

The Horseracing Integrity and Safety Act of 2020 ("the Act") recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority ("the Authority"), charged

[1] Petition for Rulemaking of The National HBPA, Inc. (July 1, 2024), *available at* https://www.regulations.gov/document/FTC-2024-0030-0002 ("Petition").
[2] Fed. Trade Comm'n, *Petition for Rulemaking of The National HBPA, Inc.*, 89 Fed. Reg. 56,676 (July 10, 2024).
[3] The Petition states that it was filed "pursuant to 5 U.S.C. § 553(e) and 16 C.F.R. § 1.9," *i.e.*, the Administrative Procedure Act and Commission Rule 1.9. Commission Rule 1.9, however, governs petitions for rulemaking under Section 18 of the FTC Act, 15 U.S.C. § 57a (authorizing the Commission to promulgate rules defining unfair or deceptive acts or practices). The substance of the Petition makes clear that NHBPA requests that the Commission commence a proceeding under the Horseracing Integrity and Safety Act, 15 U.S.C. § 3053(e). The Commission will therefore construe the Petition as a request for a rulemaking under Rule 1.31, 16 C.F.R. § 1.31, which sets forth the Commission's procedures for rulemaking petitions generally.

with, among other things, proposing and enforcing rules on a variety of subjects relating to horseracing.[4] When the Authority proposes a rule under the Act, the rule becomes effective only if it is approved by the Commission.[5] After the Commission approves a rule that the Authority has proposed, the Authority may enforce the rule as provided by the Act and the Commission-approved rules of the Authority.[6] Violations of the Authority's rules can result in, among other things, a permanent ban or temporary suspension from horseracing, forfeiture of purses, monetary fines, and changes to the order of finish in Covered Races.[7] The Authority can also propose a modification to an existing rule, which also takes effect only after Commission approval. In addition, the Commission may

> abrogate, add to, and modify the rules of the Authority . . . as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of this chapter and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this chapter.

15 U.S.C. § 3053(e).

On March 27, 2023, the Commission approved the Authority's ADMC rules,[8] which have remained in effect since May 22, 2023.[9] Those rules address a number of anti-doping concerns, including substances that are banned outright ("Banned Substances")[10] and substances

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[4] 15 U.S.C. §§ 3051–3060.
[5] *See id*. § 3053(c)(2) (directing the Commission to "approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with" the Act and the Commission's rules).
[6] *Id*. § 3057.
[7] *Id*. § 3057(d)(3)(A). The ADMC program is administered by the Horseracing Integrity and Welfare Unit ("HIWU"), a unit of Drug Free Sport International, with which the Authority has contracted pursuant to 15 U.S.C. § 3054(e). For ease of reference, and because the decisions of HIWU are, effectively, the decisions of the Authority, this Order refers to the Authority throughout.
[8] *See* Fed. Trade Comm'n, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf.
[9] Fed. Trade Comm'n, *Notice of Horseracing Integrity and Safety Act: Anti-Doping and Medication Control Rule*, 88 Fed. Reg. 27,894 (May 3, 2023), https://www.federalregister.gov/documents/2023/05/03/2023-09247/horseracing-integrity-and-safety-act-anti-doping-and-medication-control-rule.
[10] The current list of Banned Substances can be found at https://bphisaweb.wpengine.com/wp-content/uploads/2023/12/HISA_BannedProhibitedList_Report_113023a.pdf.

that are regulated as controlled medications ("Controlled Medications").[11] Together, Banned Substances and Controlled Medications are referred to as "Prohibited Substances." In accordance with section 3057(a)(2)(A) of the Act, the ADMC rules create a strict liability regime. The Authority need not demonstrate how the Prohibited Substance found its way into the horse, nor need the Authority demonstrate any knowledge or intent on the part of the responsible person.[12] If a horse tests positive for a Prohibited Substance, the person responsible for the horse is subject to civil sanctions.

As the Authority explained when it proposed its ADMC rule, Banned Substances are substances that "should never be in a horse's system or used on a horse as they serve no legitimate treatment purpose."[13] By contrast, Controlled Medications are substances that "have been determined to have appropriate and therapeutic purposes, and so may be used outside the Race Period, except if specified otherwise."[14] Because Banned Substances have no legitimate use, under the Authority's ADMC Rule 3212(c), "the presence of any amount of a Banned Substance or its Metabolites or Markers in a Sample collected from a Covered Horse constitutes an Anti-Doping Rule Violation." As for Controlled Medications, because they can have an appropriate and therapeutic purpose, the ADMC rules prohibit their use only during a "Race Period," *i.e.*, from 48 hours before a covered race or workout to one hour after the covered race or workout, unless specified otherwise in the Prohibited Substances List.[15] Thus, under ADMC Rule 3312(c), "the presence of any amount of a Controlled Medication Substance or its

[11] The current list of Controlled Medications can be found at https://bphisaweb.wpengine.com/wp-content/uploads/2023/12/HISA_ControlledProhibitedList_Report_12.06.23.pdf.
[12] *See* HISA Rules 3212(a), 3213(a), 3312(a), 3313(a).
[13] Fed. Trade Comm'n, *Notice of HISA Anti-Doping and Medication Control Rule*, 88 Fed. Reg. 5,070, 5,071 (Jan. 26, 2023), https://www.federalregister.gov/documents/2023/01/26/2023-00957/hisa-anti-doping-and-medication-control-rule.
[14] *Id*.
[15] *See* HISA Rule 1020.

Metabolites or Markers *in a Post-Race Sample or Post-Work Sample* collected from a Covered Horse constitutes a Controlled Medication Rule Violation" (emphasis added). As an exception to these general rules, under Rules 3212(d) and 3312(d), "the Prohibited List, Standards, or Technical Documents may establish special criteria for the reporting or the evaluation of certain [Banned or Controlled Medication Substances], including a Minimum Reporting Level, Screening Limit, Threshold, or Decision Limit."

II. NHBPA's Petition

In its Petition, NHBPA asks that the Commission, pursuant to 15 U.S.C. § 3053(e), "adopt a rule to create no-effect thresholds" for all Prohibited Substances under the Authority's ADMC rules. NHBPA defines a no-effect threshold as "a number below which no trainer or owner will be punished for innocent and pharmacologically irrelevant concentrations of foreign substances that have no effect on a horse."[16] NHBPA argues that because laboratory testing can detect and report picograms per milliliter,[17] horsemen are unfairly punished when the Authority does not account for no-effect thresholds. According to NHBPA, the absence of such thresholds is damaging reputations and careers and is costing "thousands of dollars in lost earnings and legal fees."[18]

NHBPA compares these testing standards to those found in human workplace drug testing and EPA water quality testing and provides examples of no-effect thresholds in those contexts. NHBPA argues that, much as in the case of human exposure to trace amounts of drugs through drinking water, the minimal amounts of certain substances found in equine test results

[16] Pet. at 1. NHBPA also notes that "no-effect threshold" is also known as "no-effect screening limit or no-effect cutoff." *Id*.
[17] A picogram is one-trillionth of a gram. *See* NIST Office of Weights and Measures, Metric (SI) Prefixes, https://www.nist.gov/pml/owm/metric-si-prefixes.
[18] Pet. at 5. The NHBPA provides examples of individuals who have been suspended or fined by the Authority when their racehorses have tested positive for certain substances.

can be attributed to "environmental transfers," and that miniscule amounts of those substances have no effects on the horse or its performance.[19] According to NHBPA, environmental transfers account for many of the positive test results found in horses, and thus no-effect thresholds should be set for all substances tested in racehorses. As an example, NHBPA's Petition discusses the drug Metformin.[20] A widely prescribed drug for humans, Metformin is a Banned Substance for horses under the Authority's rules. NHBPA notes that, after multiple incidents of what were potentially environmental transfers of Metformin and an "outcry against punishment for microscopic levels of Metformin," the Authority deferred enforcement of the rules against individuals when a horse tests positive for the medication, pending a review of the available science relating to Metformin by the Racing Medication & Testing Consortium's (RMTC) Scientific Advisory Committee.[21] On November 17, 2025, the Authority announced that it plans to propose a rule modification to the Commission to adopt a Minimum Reporting Level for Metformin of 4.0 nanograms per milliliter in blood. This is based on the RMTC's Scientific Advisory Committee's finding that this level reflects exposure to Metformin "due to intentional administration and minimizes the possibility of a reported [Adverse Analytical Findings] due to inadvertent exposure."[22]

NHBPA acknowledges that the Authority has proposed changes to the ADMC program

[19] NHBPA defines environmental transfers as inadvertent transactions that spread a foreign substance from one being or object to another – for example, residual amounts of an authorized medication on a jockey's hands being transferred to the jockey's horse. *Id*. at 8-9.
[20] "Metformin helps control blood sugar" and is found in prescription drugs used by patients who have type 2 diabetes. U.S. Food & Drug Admin., Metformin Information, https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/metformin-information.
[21] *See* HISA Announcement Regarding Metformin (June 4, 2024), *available at* https://hisaus.org/news/hisa-announcement-regarding-metformin. This deferral, however, applies only to the responsible person; a horse that tests positive is still disqualified from any race results and provisionally suspended.
[22] *See* Press Release, "HISA and HIWU Announce Proposed Updates to Testing Specifications for Metformin in Response to Recommendations from the RMTC's Scientific Advisory Committee" (Nov. 17, 2025), https://hisaus.org/news/hisa-and-hiwu-announce-proposed-updates-to-testing-specifications-for-metformin-in-response-to-recommendations-from-the-rmtcs-scientific-advisory-committee.

and the Authority's rules to set thresholds for additional substances.[23] NHBPA, however, believes that the proposals do not go far enough.[24] First, NHBPA claims that these changes give too much "discretion to [the Authority], which will lead to subjective decision-making and unequal treatment of similarly situated individuals."[25] Second, NHBPA argues that the Authority's proposed no-effect thresholds are lower than those used by other scientists, and it is not clear what basis the Authority is using for those thresholds. Third, NHPBA contends that the proposal does not set no-effect thresholds for the majority of substances tested. NHBPA believes these problems will continue "to perpetuate unjust outcomes."[26]

NHBPA asks that the Commission set specific no-effect thresholds for five different substances.[27] For example, NHBPA requests that the no-effect threshold for 20-Hydroxecdysone be set at 2 nanograms/milliliter in urine. NHBPA also asks that the Commission issue a rule to create a to-be-determined, "scientifically based" no-effect threshold for three other substances. Finally, NHBPA asks that the Commission require the Authority to establish no-effect thresholds for "all other medications or substances being tested."[28] NHBPA asserts that the Act requires the Authority to set a no-effect threshold for every Prohibited Substance.

In support of its Petition, NHBPA includes a number of exhibits. These include twelve scientific studies; the Authority's Banned Substances and Controlled Medications lists; a statement from a person whose horse tested positive for substances on the list; a petition to

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[23] *See* Proposed Modifications to the ADMC Rules (May 14, 2024), https://bphisaweb.wpengine.com/wp-content/uploads/2024/05/Proposed-Modifications-to-the-ADMC-Rules-Updated-May-14-2024.pdf. The Authority recently announced a further set of proposed ADMC Rule modifications, which we discuss further at pp. 11-12, *infra*. *See* Press Release, "HISA Seeks Public Comment on Proposed Anti-Doping and Medication Control Rule Modifications" (Nov. 18, 2025), https://hisaus.org/news/hisa-seeks-public-comment-on-proposed-anti-doping-and-medication-control-rule-modifications.
[24] Pet. at 14.
[25] *Id*.
[26] *Id*. at 15.
[27] *Id*. at 15-18.
[28] *Id*. at 16.

members of Congress asking the Authority to revise its testing thresholds; NHBPA's Motion to Supplement the Record filed in *National Horsemen's Benevolent & Protective Association v. Black*, 107 F.4th 415 (5th Cir. 2024); and the Authority's Announcement Regarding Metformin, *supra* n. 22.

NHBPA acknowledges that it is currently in litigation with the Commission and the Authority, in which NHBPA takes the position that the Act is unconstitutional.[29] NHBPA explains the history of the ongoing litigation, noting that Congress amended the Act to permit the Commission to modify the Authority's rules after their promulgation.[30] NHBPA states that its Petition was submitted without prejudice to its position in the litigation.[31]

III. Summary of Comments

The Commission received over 1,000 comments in response to its request for comment on this Petition.[32] Many commenters encouraged the Commission to establish no-effect thresholds for every substance and medication the Authority tests in order to "protect honest horsemen from false allegations of cheating, and [ ] improve public perception of the sport."[33] Many claimed the current testing policy is harming horseracing and damaging the reputations of

[29] *Id*. at 3. The Commission notes that it received the Petition on July 2, 2024. On July 5, 2024, the Fifth Circuit held that "in light of Congress's amendment to [the Act] in § 3053(e), the Authority's rulemaking power is subordinate to the FTC's. Because the FTC has ultimate say on what the rules are, the Authority's power to propose horseracing rules does not violate the private nondelegation doctrine." *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 107 F.4th 415, 426 (5th Cir. 2024), *vacated by* 145 S.Ct. 2837 (2025). As to the other claims raised in this litigation, the Fifth Circuit held that "HISA's enforcement provisions [] violate the private nondelegation doctrine." 107 F.4th at 435. The court further held that the Act did not violate the Fifth Amendment's due process clause or the Appointments Clause of Article II. Finally, the court held that a racing association lacked standing to challenge the Act on anti-commandeering grounds. The Supreme Court subsequently granted certiorari in this litigation, vacated the Fifth Circuit's judgment, and remanded the case to the court of appeals in light of the decision in *FCC v. Consumers' Research*, 606 U.S. 656 (June 27, 2025).

[30] NHBPA does not agree that this amendment to the Act cured the constitutional issues it has identified. Pet. at 3.

[31] *Id*. at 4.

[32] *See* https://www.regulations.gov/docket/FTC-2024-0030/comments.

[33] *See e.g.* Thomas Little, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 8, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0139; Eric Hamelback, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Jul. 22, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0008; Suzanne Barrett, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Jul. 23, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0036.

the people who participate in it. A majority of these comments were part of a mass-mailing campaign and essentially identical. After these identical or duplicative comments were accounted for, 205 unique comments were identified and posted on the public docket.[34]

Commenters focused on a number of topics, such as testing, penalties, environmental contamination, false allegations, high costs (for complying with or being penalized for violations of the Act and the Authority's rules), and the repeal of the Act. For example, one commenter stated:

> A young trainer with 20 years of training experience and zero violations for medication or substance violations was recently cited for a medication violation which had no established threshholds [sic] nor a reason for it being on the prohibited drug list. The initial blood test indicated the presence of the drug but no such drug was ever administered or even used in the stable. The trainer was to be fined $1000, suspension for 30 days, and loss of purse. This has devastated this young trainer with a 20-year clean training history.[35]

Another stated:

> In human drug testing, they have realistic testing thresholds below which there is no testing for trace levels with no pharmacological impact on performance. Horse racing's unrealistic screening levels, including level of detection in too many instances, has created a huge and needless black eye for horse racing.[36]

Other commenters focused their comments on the possibility of environmental contamination. One argued that "[t]reating obvious environmental contamination positives as integrity violations is unfair and wrongheaded."[37] According to a comment letter submitted by three members of Congress, "[t]he majority of such low-level detections are meaningless to the horse and are the result of environmental transfers from perfectly benign sources such as unclean

[34] Comments posted to the docket either provided information beyond that included in the mass-mailing or were not a part of the mass-mailing campaign.
[35] Daniel Baumann, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 5, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0118.
[36] Jennie Rees, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Jul. 22, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0003.
[37] U.S. Trotting Association and its Harness Racing Medication Collaborative, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 9, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0194.

receiving stalls, where horses are housed temporarily before a race.[38] Describing environmental transfers as "inevitable," this comment concluded that "it is imperative that no-effect thresholds be instituted."[39]

The U.S. Trotting Association ("USTA") also submitted a comment in support of the Petition. Acknowledging that it is not currently subject to the Act and that it is a party to the litigation described in the Petition, it noted that it was submitting its comment without prejudice to its litigation position because it does not want to waive its opportunity to comment on a possible rule that might someday apply to it.[40] The USTA's comment focused on environmental contamination, stating in part that "random, innocuous contact has resulted in minute levels of contamination for dozens, if not hundreds, of horses, with many of these tests coming back positive for trace amounts of medications prescribed for human use."[41] The USTA stated that this type of contamination is similar to the contamination found on people when they handle circulated dollar bills.[42] The comment continues, "[d]espite knowing this, [the Authority] has frequently plowed ahead, issuing draconian, career-altering suspensions and fines to horsemen who have done nothing wrong."[43]

Six comments opposed the Petition. These commenters argued that granting the Petition would not protect horses but would protect trainers. For example, one commenter argued that the

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[38] Representatives Clay Higgins, Don Davis, and Lance Gooden, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 8, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0207.
[39] *Id*.
[40] U.S. Trotting Ass'n, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 8, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0162, at 1-2.
[41] *Id*. at 2.
[42] *Id*. In its Petition, the NHBPA recounts a 1998 study that found that cocaine was present on almost 80% of dollar bills tested. "The study hypothesized that when a bill used to snort cocaine is run through a bank's money-counting machine, it cross-contaminates all the other bills in the machine because cocaine powder is extremely fine and is thrown into the air by these machines." Pet. at 6 (citing Oyler, J., *et al*., *Cocaine Contamination of United States Paper Currency*, 20 J. Analytical Toxicology 213 (1996), erratum in 22 J. Analytical Toxicology 15 (1998), https://pubmed.ncbi.nlm.nih.gov/8835657/).
[43] U.S. Trotting Ass'n Cmt., *supra* n. 40, at 2.

purpose of the Act is to protect horses and thus there should be zero tolerance when testing for certain substances. This commenter provided several attachments in support of her contention that claims of environmental contamination are not true.[44] Another commenter argued that the Petition's proposed thresholds, if implemented, "could create loopholes and allow for minimal but potentially strategic use of prohibited substances, undermining efforts to ensure a level playing field."[45] This commenter further stated that "[t]he proposed rule, while well-intentioned, risks diluting the stringent measures needed to combat doping effectively."[46]

The Authority submitted a comment opposing the Petition. This comment argued that "[t]he application of 'no effects thresholds' to all Prohibited Substances (or even to the subset of substances prioritized in the Petition) would not be consistent with best practice in anti-doping and medication control and would be contrary to horse welfare."[47] The Authority described as "fundamentally flawed" the Petition's underlying assumptions that "low concentrations of a Prohibited Substance in a horse's Sample (1) demonstrate that use of that Prohibited Substance must have been *'innocent'*, and (2) are *'pharmacologically irrelevant'* and therefore have *'no effect on a horse.'*"[48] The Authority explained that detection of a low concentration merely demonstrates prior exposure to a prohibited substance, and that the low concentration could be the result of a recent exposure to a small amount of the substance or a less recent exposure to a larger amount of the substance, "such that the low concentration detected in the Sample reflects the tail-end of its excretion from the horse's body." The Authority noted that a low concentration

[44] Alice Allen, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 8, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0167.
[45] Hwasun Jo, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Jul. 28, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0099.
[46] *Id*.
[47] Horseracing Integrity and Safety Authority, Inc. and the Horseracing Integrity & Welfare Unit, Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 9, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0188, at 1.
[48] *Id*. at 2 (emphasis in original).

in a sample cannot, in itself, establish whether the horse's exposure to the substance was deliberate or inadvertent, nor can it demonstrate that the substance had no impact on the horse's performance.[49] The Authority's comment further argued that its Prohibited Substances List does not violate the Act, which does not require the Authority to set allowable limits for every Controlled Medication Substance or every Prohibited Substance, and that NHBPA's proposal set forth in the Petition would in fact be contrary to the Act and its purposes.[50]

Finally, NHBPA submitted a comment replying to the Authority's comment. NHBPA argued that the Authority misconstrued the Act when it asserted that the Prohibited Substance List is consistent with the Act. NHBPA also stated that the Authority's proposed amendments to the ADMC rules are inconsistent with the Act because they do not propose allowable limits or no-effect thresholds for all Prohibited Substances.[51] NHBPA further contended that the "Authority's recommended no-effect thresholds do not rely on peer-reviewed, scientific studies."[52] Finally, NHBPA alleged that the Authority's "enforcement rules violate basic constitutional protections of due process."[53]

IV. The Commission's Resolution of the Petition

Having considered the Petition and the comments submitted, the Commission denies the Petition for four reasons. First, with regard to the eight specific substances identified in NHBPA's petition, the Authority proposed thresholds for several of them in its May 2024 proposed revisions to the ADMC rules. And as noted above, the Authority very recently announced a new examination of its ADMC program, including substantial potential revisions to

[49] *Id*.
[50] *Id*. at 9-10.
[51] The National HBPA, Inc., Cmt. on Petition for Rulemaking of The National HBPA, Inc. (Aug. 9, 2024), https://www.regulations.gov/comment/FTC-2024-0030-0206, at 1-2.
[52] *Id*. at 2.
[53] *Id*.

the ADMC rules.[54] As the Authority evaluates the public comments on those draft revisions and decides which, if any, to propose to the Commission, we anticipate that the Authority will give serious consideration to NHBPA's arguments regarding these substances. Moreover, if the Authority ultimately declines to adopt any of the NHBPA's proposed thresholds (or any other thresholds proposed by interested persons), we expect the Authority to provide a thorough public explanation as to why it did so. In either event, the Authority's current invitation for public comments—to be followed by its submission of proposed ADMC rule modifications to the Commission (and another public comment period initiated by *Federal Register* publication)—should provide NHBPA with ample opportunities to provide further information and advocacy in support of any further revisions it wishes to propose, including no-effect thresholds. The Commission encourages NHBPA to take advantage of those opportunities.

Second, the Commission disagrees with NHBPA's claim that the Act mandates no-effect thresholds for all Prohibited Substances. The Act directs the Authority to propose rules relating to "a list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods."[55] The Commission approves those proposed rules so long as they are consistent with the Act,[56] and the Commission has expressly determined that the Authority's Prohibited List (Rule 4000 Series) is consistent with the Act.[57] The statute contemplates "limits," including thresholds, only with respect to "permitted medications, substances, and methods." Banned Substances, however, are not "permitted" at any time. Thus, the statute does not contemplate, much less mandate, allowable limits for Banned

[54] *See* Press Release, "HISA Seeks Public Comment on Proposed Anti-Doping and Medication Control Rule Modifications," *supra* n. 23. The Authority is accepting public comments on its draft revisions through January 5, 2026.
[55] 15 U.S.C. § 3053(a)(2); *see also id*. § 3055(c)(1)(B).
[56] *Id*. § 3053(c)(2).
[57] Fed. Trade Comm'n, Order Approving the Anti-Doping and Medication Control Rule, *supra* n. 8, at 31.

Substances. Likewise, for Controlled Medications, to the extent they are not "permitted" during a Race Period, the Act does not mandate that the Authority set no-effect thresholds.

Third, we disagree with NHBPA's position that the Act prohibits the presence of substances only at such a level as would have an "effect on the performance or health of the racehorse."[58] The Act provides that the Authority, subject to Commission oversight, shall "exercise independent and exclusive national authority over (A) the safety, welfare, and integrity of covered horses, covered persons, and covered horseraces; and (B) all horseracing safety, performance, and anti-doping and medication control matters for covered horses, covered persons, and covered horseraces."[59] Thus, while the performance and health of covered horses are considerations for the Authority, they are far from the only ones that the Authority must take into account when developing and implementing its ADMC program. The Authority's remit under the statute includes maintaining the integrity of the sport, as well as the safety and welfare of covered persons and covered horses. The presence of a Banned Substance in a covered horse implicates the integrity of the sport because it means that, at some point, the horse was administered or otherwise came into contact with a substance that has no legitimate use. Even if the level of the substance in the horse's system at race time has "no effect," that does not exclude the possibility that the level was higher in the past, perhaps at a level that affected the performance or safety of the horse. And if the Banned Substance did, in fact, have an effect, then that could have significant adverse effects for the horse and the jockey even if the effect was outside the race period.

Finally, that some horsemen have suffered adverse consequences due to a positive test result for a Prohibited Substance is a consequence of the ADMC program's strict liability

[58] Pet. at 15.
[59] 15 U.S.C. § 3054(a)(2).

regime, which is consistent with the law Congress enacted. The Act provides that one of the duties of the ADMC program is to "ensure that covered horses and covered persons are deterred from using or administering medications, substances, and methods in violation of the rules established in accordance with this chapter."[60] Holding covered persons strictly liable for the presence of Prohibited Substances furthers that goal and is expressly permitted by 15 U.S.C. § 3057(a)(2)(A).[61] The ADMC rules do provide some limited exceptions to the strict liability regime in exceptional circumstances. A covered person may have a sanction eliminated or reduced if they can demonstrate no (or no significant) fault or negligence.[62] In addition, certain Prohibited Substances are designated as "Specified Substances," which are those that pose a higher risk of being the result of contamination and are, therefore, subject to more flexible sanctions.[63] In addition, the Act directs the Authority to consider specific international standards when developing baseline anti-doping rules,[64] and the Authority points out in its comment that its approach is consistent with the international standards identified in the Act.[65] Moreover, the ADMC rules have been in effect since May 2023, and the Commission has already found that the current rules are consistent with the Act. In fact, the Commission's order approving the Authority's ADMC rules at several junctures noted the strict liability standard imposed by the restrictions on Prohibited Substances.[66] Covered persons have therefore been on notice of the

[60] *Id*. § 3054(e)(1)(E)(ii).
[61] This provision states that the description of rule violations proposed by the Authority under Section 3053 of the Act may include, "With respect to a covered horse, strict liability for covered trainers for—(i) the presence of a prohibited substance or method in a sample or the use of a prohibited substance or method; (ii) the presence of a permitted substance in a sample in excess of the amount allowed by the horseracing anti-doping and medication control program; and (iii) the use of a permitted method in violation of the applicable limitations established under the horseracing anti-doping and medication control program."
[62] HISA Rules 3224, 3225, 3324, and 3325.
[63] *See* HISA Rule 4010.
[64] *Id.* § 3055(g)(2).
[65] Pet. at 4-5, 9-10.
[66] *See* Fed. Trade Comm'n, Order Approving the Anti-Doping and Medication Control Rule, *supra* n. 8, at 16, 21, 23-24, 50.

strict liability regime and have had two years to limit the risk of environmental or other "innocent" transfers.[67]

V. CONCLUSION

For the foregoing reasons, we deny the Petition.

[67] NHBPA also argues that "no-effect thresholds are common in the human world of drug testing," citing the drug testing policies of the Department of Transportation, the Department of Health and Human Services, and the Environmental Protection Agency. Pet. at 6. NHBPA fails to acknowledge, however, that in the world of human sports, human *athletes* are routinely subject to zero-tolerance policies for prohibited substances, with no minimum thresholds for many substances. Moreover, racehorses' interactions with the world differ significantly from those of humans. Humans have agency and can move freely through the world, consuming and being exposed to a wide variety of environmental substances. Racehorses, however, lack agency and do not move as freely as humans; a racehorse's responsible person determines to what environments a horse is exposed and what the horse eats and drinks. It is therefore not unreasonable to place the onus on responsible persons to keep a racehorse's environment free of Prohibited Substances.